

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of)	MAIL STOP AF
Christophe Martin et al.)	Group Art Unit: 2164
Application No.: 10/583,476)	Examiner: Daniel A. Kuddus
Filed: June 19, 2006)	Confirmation No.: 3680
For: METHOD FOR BACKING UP)	
PERSONAL DATA OF A)	
TELECOMMUNICATIONS)	
NETWORK SUBSCRIBER,)	
SERVER AND ASSOCIATED)	
DEVICE)	

REQUEST FOR PRE-APPEAL BRIEF REVIEW

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicants request review of the final rejection in the above-identified application. This request is void of amendments and is filed concurrently with a Notice of Appeal.

In the Office Action dated July 9, 2009, Applicants' claims were finally rejected as follows:

1. Claims 1-7 and 11-17 were objected to because claims 1 and 11, which recite "[A] method of backing up", should allegedly read "A computer implemented method of backing up".
2. Claim 18 stands rejected under 35 U.S.C. § 101 for allegedly being directed to non-statutory matter.
3. Claims 1, 8-11, and 18-20 are rejected under 35 U.S.C. § 102(e) for allegedly being anticipated by *Ludwig et al.* (U.S. Patent Publication No. 2004/0107254 A1).
4. Claims 2-7 and 12-17 stand rejected under 35 U.S.C. § 103(a) for alleged unpatentability over *Ludwig* and further in view of *Van Reenen et al.* (WO 03/037015 A1).

Applicants submit that due to the entry of the amendment after final in which claims 1-10 are canceled, the corresponding rejections and objections concerning

the same are rendered moot. For the sake of brevity, this communication only addresses the rejections of claims 11-20 under 35 U.S.C. §§102(e) and 103(c).

The courts have established that to properly anticipate a claim, the document must disclose, explicitly or implicitly, each and every feature recited in the claim. See Verdegall Bros. v. Union Oil Co. of Calif., 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

Independent claim 11 recites the following:

A method of backing up personal data of a wireless communication network subscriber, the personal data being memorised within a mobile communication device and backed up within a network server,

wherein said method includes an asynchronous backup mode in which, once the mobile communication device has prepared a first subset of data from among a batch of data to be backed up and transmitted the first subset of data to a network server for backing up, the backup is delayed by a predetermined period of time, so as to free the mobile communication device for a user of the mobile communication device, and the backup of at least one subset of data subsequent to the first subset of data is resumed at the end of said predetermined period of time.

Ludwig fails to disclose every feature recited in Applicants' claims as alleged. As previously stated, *Ludwig* teaches a method of real-time communication between a plurality of users, where each user has a communication device with an associated display. The method allows the users to collaborate and share information to replicate the benefits of face-to-face collaboration. (*Ludwig*, Abstract and pgphs 41 and 42). In addition to real-time communication, the method also includes features such as multimedia mail that permit the asynchronous exchange of arbitrary multimedia documents, including previously recorded teleconferences. *Id.*, pgph 43.

In the Office Action, the Examiner relies on various features of *Ludwig* to reject Applicants' claims. However, when taken in context these features are seemingly unrelated and particularly, when viewed in the context of Applicants' claims. Applicants submit that given a reasonable and prudent interpretation, one of ordinary skill would find that *Ludwig* does not anticipate Applicants' claims.

For example, the Examiner alleges that **the recording of a real-time teleconference on a computer as disclosed by *Ludwig*** is analogous to Applicants claimed "personal data being memorised within a mobile communication device and backed up within a network server." The Examiner also alleges that **the**

display of a caller's image in a video mosaic as taught in *Ludwig* is analogous to Applicants claimed "a first subset of data from among a batch of data to be backed up and transmitted the first subset of data to a network server for backing up." Applicants claimed delay of the backup by a predetermined period of time, so as to free the mobile communication device for a user of the mobile communication device is alleged to read on ***Ludwig's disclosure of accommodating real-time delays, jitter-sensitive signals, and asynchronous data.*** Further, Applicants claimed backup of at least one subset of data subsequent to the first subset of data is resumed at the end of said predetermined period of time is alleged to read on ***Ludwig's disclosure of a participant holding a call, resuming a held call, adding one or more participants to the call, initiating data sharing, and hanging up the call.***

Applicants submit that there is no sufficient nexus between the features cited by the Examiner to render the claims as anticipated. Namely, if the recording of real-time data of a teleconference is analogous to Applicants' claimed backup of personal data, Applicants fail to see how the display of a caller's image in a video mosaic is analogous to a first subset of data as is also recited in Applicants' claim. Here, the display of video data is seemingly unrelated to the recording of the real-time data when viewed in the context of Applicants' claims.

Furthermore, *Ludwig* provides no guidance as to how the recording of real-time data of a teleconference can be delayed by a predetermined time and resumed after the predetermined time as recited in Applicants' claim. The Examiner alleges that the delay can be found through the accommodation of delays and the ability of a user to hold a call. However, *Ludwig* does nothing to support the Examiner's finding, because there is no disclosure or suggestion of delaying or stopping the recording of a multimedia conference on a computer. In fact, *Ludwig* discloses that the recording feature permits users to review real-time collaboration **as it previously occurred.** See *Ludwig*, pgph 242. With respect to recording a multimedia conference, *Ludwig* discloses the concept of delivering delayed collaboration. However, this concept appears to refer to an ability to collaborate with a multimedia conference after the conference has ended or at a later time. This term has no relation or reference to a delay in backing up or recording the multimedia conference.

In an Amendment After Final dated October 9, 2009, Applicants requested that the Examiner clarify the interpretation of *Ludwig* as it relates to the claimed features. In an Advisory Action dated October 21, 2009, the Examiner attempts to address Applicants request, however, the Examiner's comments still fail to clarify the interpretation of *Ludwig*.

On page 2 of the Advisory Action, the Examiner cites to paragraph 150 of *Ludwig* for allegedly teaching Applicants claimed delay of backup by a predetermined time. Upon close inspection, however, this paragraph describes the ability of a user to put an active call on hold. Nowhere in *Ludwig* could Applicants find a discussion that ties the "hold" of an active call to the delay in recording the multimedia conference. In fact, Applicants do not believe this to be the case. As noted above, *Ludwig* teaches that the recording feature permits users to review real-time collaboration **as it previously occurred**. See *Ludwig*, pgph 242. Thus, even if the user places a call on hold, recording the teleconference would seemingly continue such that the finished recording would have a portion in which the user who activated the "hold" feature would not be present. This is in line with the disclosure of *Ludwig* as the recording would depict the real-time collaboration **as it previously occurred**.

In summary and as discussed in previous responses, Applicants submit that the Examiner has failed to establish a *prima facie* case that *Ludwig* anticipates Applicants' case.

Van Reenen is applied in an effort to remedy the acknowledged deficiencies of *Ludwig* with respect to claims 2-7 and 12-17. Applicants respectfully submit, however, that the combination of these references fails to establish a *prima facie* case of obviousness.

As such, the final Office Action does not present a record that is appropriate for consideration by the Board of Patent Appeals and Interferences. Therefore, withdrawal of the final Office Action is respectfully submitted to be in order.

Respectfully submitted,

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Date: November 9, 2009

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